

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

CHAZ PINKSTON

PLAINTIFF

V.

NO. 4:17CV39-DMB-DAS

DR. KUIPER

DEFENDANT

ORDER

Comes now the Court, *sua sponte*, upon consideration Plaintiff's late-filed notice of his desire for a jury trial.

Background

Plaintiff Chaz Pinkston initiated the instant lawsuit in March 27, 2017. *See* Doc. #1. In his initial complaint, Plaintiff did not request a jury trial. The court held a *Spears* hearing in August 2017, and following that hearing, it issued a scheduling order setting this cause for an evidentiary hearing. *See* Doc. #16. Defendants filed answers in this case from August 30, 2017, through October 2, 2017. *See* Docs. #26, #27, #29-#31, #37, #44-46. The case proceeded through the normal stages of litigation, and in December 2017, Defendants filed a motion for summary judgment. *See* Docs. #65 & #66. Because the motion for summary judgment remained pending near the original evidentiary hearing date, the hearing was reset for June 4, 2018. *See* Doc. #112. The summary judgment was still not resolved in May 2018, and the court granted Defendants' request to continue the hearing until a ruling could be rendered on the summary judgment motion. *See* Docs. #122 & #123.

On June 5, 2018, Plaintiff filed a motion for subpoenas. *See* Doc. #127. In that motion, he stated, for the first time in this litigation, his intention to "affirm[] that he wants a publicly open jury trial." *Id.* at 2. Approximately one month later, on July 9, 2018, Plaintiff filed a

motion requesting an evidentiary hearing. *See* Doc. #128. On July 25, 2018, the court entered an order granting summary judgment to all Defendants except Dr. Kuiper. *See* Doc. #129. On August 2, 2018, the court reset Plaintiff's evidentiary hearing for July 7, 2018. *See* Doc. #130.

On August 3, 2018, after the summary judgment motions were resolved, the court entered an order addressing Plaintiff's requests for subpoenas and an evidentiary hearing. *See* Doc. #131. The court denied Plaintiff's motion for subpoenas and dismissed the request for an evidentiary hearing as moot, noting that a hearing had already been reset by the court. *Id.* In a footnote, the court stated:

In his motion for subpoenas, Pinkston noted that he wished to confirm his request for a “publicly open jury trial,” which is his first request that his case be heard by a jury. [] Due to his subsequent motion requesting an evidentiary hearing, however, the Court assumes that Pinkston intended only for the Court to set a hearing where his claims would be addressed in open court.

Id. at n.1

On August 17, 2018, Plaintiff submitted a letter to the court. *See* Doc. #141. In that letter, Plaintiff stated that the court misunderstood his subpoena requests and noted that since he had requested the subpoenas in a letter, not a motion, he did not know that it would be considered as a motion. *Id.* at 1. He also stated that he did not know that he had to request a jury trial until he sought legal services in May 2018. *Id.* at 2. In response, the Clerk sent Plaintiff a letter advising him that any “[d]ocuments filed with the court must be in the form of a formal pleading,” and to refrain from filing letters and correspondence, as those would not be reviewed by a judge as part of his case. *See* Doc. #144. Subsequently, Plaintiff has filed several different motions seeking relief. However, he has not filed a motion requesting the court set a jury trial.

Discussion

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, a plaintiff must make his demand for a jury trial within fourteen days of the date the defendant's answer is filed. *See Fed. R. Civ. P. 38(b)*. In this case, Plaintiff failed to make a timely demand, and therefore, he has waived his right to demand a jury trial. Here, Plaintiff waited several months after Defendants filed an answer and only then mentioned a jury trial in a letter to the Clerk. Thereafter, Plaintiff failed to properly file a motion requesting a jury trial even after being instructed that he must file a motion for his request to receive consideration. Accordingly, the court does not know whether Plaintiff has abandoned his desire for a jury trial or whether he has merely failed to follow the court's orders. Regardless, the court finds that Plaintiff had numerous opportunities to properly request a jury trial and has failed to do so, and therefore, the court explicitly finds that any request by Plaintiff for a jury trial at this late stage of the proceedings is **DENIED** as improperly filed and untimely.

Conclusion

The Court finds that no public jury trial should be ordered in this matter, and that this case should proceed to evidentiary hearing.

SO ORDERED, this 20th day of November, 2018.

/s/ David Sanders
UNITED STATES MAGISTRATE JUDGE